

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

ORIGINAL

In the Matter of)
)
Market Entry and Regulation of) IB Docket No. 95-22
Foreign-Affiliated Entities) RM-8355
) RM-8392

To: The Commission

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MAY 12 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

REPLY COMMENTS OF COLUMBIA COMMUNICATIONS CORPORATION

Columbia Communications Corporation ("Columbia"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's rules, hereby replies to comments filed in response to the Commission's above-captioned Notice of Proposed Rulemaking. Market Entry and Regulation of Foreign-affiliated Entities, FCC 95-53 (released February 17, 1995) ("NPRM"). In its initial Comments on the NPRM, Columbia proposed that the Commission's market openness test be applied not only to applications involving foreign investment in U.S. carriers, but also to Section 214 authorizations and Title III satellite earth station applications that seek to use foreign-controlled international satellite facilities. Such a step would provide a means of addressing the inequity caused by countries that have closed their markets to U.S.-licensed international separate satellite systems, in sharp contrast to the fact that all foreign-licensed companies benefit from the U.S. "Open Skies" policy that has long permitted virtually unconstrained access to the U.S. market.

Columbia was not alone in raising this issue in response to the NPRM. PanAmSat Corporation filed comments directed to these same concerns, and

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advocating the same sound course favored by Columbia. Specifically, PanAmSat proposed that the Commission consider, in the context of each application proposing use of non-U.S. satellite facilities, whether U.S. satellite companies have effective market access in the home market of the satellite service provider that would receive new or enhanced *access* to U.S. customers upon grant of the subject application. See PanAmSat Comments at 4. In focussing upon the concept of *access* rather than *entry*, both Columbia and PanAmSat emphasized that the critical public interest inquiry concerning market openness in the satellite context should not be limited to instances where foreign companies seek to invest in U.S. carriers, but should also be applied when any applicant, even if 100% U.S.-owned, would use foreign satellite capacity.

As PanAmSat pointed out, such an inquiry is the only U.S. regulatory means of facilitating effective competition in the market for international satellite services. Because non-U.S. satellite systems do not themselves require U.S. licenses to provide service originating or terminating in the United States, Section 214 and Title III earth station applications are the only means of evaluating market entry issues in the international satellite context. See PanAmSat Comments at 5. In short, if U.S. companies are effectively barred from competing in another country's market for international satellite services, then entities licensed by that country should not be permitted any additional capability to exploit the U.S. market, through grant of applications permitting use of their facilities, until appropriate market-opening reforms are accomplished.

Actual barriers overseas to competition from U.S. separate systems currently take many different forms. One approach described by Columbia in its Comments is simply to bar foreign companies by denying them "landing rights," *i.e.*, the ability to access earth station facilities within the country for provision of uplink and downlink services. Moreover, as PanAmSat points out, even those countries that do officially permit U.S. satellites to provide services may require that these services be provided through and in connection with that country's monopoly PTT at exorbitant cost to both the satellite service provider and the customer. See PanAmSat Comments at 4. In either case, telecommunications users are forced to endure monopoly prices dictated by a favored provider -- often an INTELSAT signatory with added incentive to discriminate against separate system operators.

Common sense and economic fairness dictate that the United States adopt a tough approach to breaking these existing trade barriers. Foreign administrations must be given a strong incentive to permit reciprocal access to their telecommunications markets, permitting international separate systems to sell their services to end-users without imposition of prejudicial restrictions, *i.e.*, requirements that U.S. systems have local "partners" or enter into "operating agreements" with local carriers.^{1/} Fair access should be a pre-condition to entry into the U.S. market.

^{1/} Columbia notes that the U.S. announced action just two days ago against structural barriers in Japan that have impeded the ability of U.S. auto parts manufacturers to distribute their products in that country. See e.g., Clay Chandler, "Japan Targeted On Two Fronts In Trade Fight," Washington Post, May 10, 1995, at A1. Impediments erected to the use of U.S. satellite services in Japan and elsewhere are similar to these artificial -- but sometimes cleverly masked -- restraints.

In taking decisive action, the Commission should pay no heed to those who predict dire consequences arising from the action proposed. For example, there is no merit to the suggestion of Transworld Communications (U.S.A.), Inc. ("Transworld") that the establishment of clear market entry regulations would promote abusive petitions to deny. The Commission has an expert staff in the International Bureau that is well-equipped to evaluate the merits of petitions to deny, and to rule upon them accordingly.^{2/} To the extent that Transworld requests modification of the Commission's procedural rules concerning applications and petitions to deny, these requests are beyond the scope of this proceeding.^{3/}

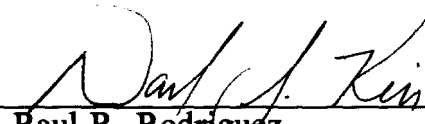
^{2/} Transworld groundlessly criticizes Columbia for filing several Petitions to Deny Transworld applications that proposed use of Russian INTERSPUTNIK satellite capacity to provide international services. Although Columbia sees no point in using this proceeding to reargue points raised there, it nonetheless notes that each of these petitions was justified by the fact that Columbia has been denied any opportunity to provide services originating and terminating in Russia. Such situations would be more easily and fairly addressed under the policy that Columbia and PanAmSat advocate in this proceeding. In any case, Transworld's assertion that it has "negated" Columbia's representations concerning anti-competitive conduct by Russian officials is wholly erroneous. See, e.g., Letter to William F. Caton from Raul R. Rodriguez and David S. Keir, Counsel for Columbia, FCC File Nos. ITC-93-159(A), TAO-2460, ITC-94-126, CSG-94-078-P/L and ISP-94-004, at 3 (dated September 29, 1994). On the other hand, Columbia notes that Transworld itself has recklessly abused the Commission's processes by filing strike pleadings opposing unrelated Columbia applications. See id. at 2; Transworld's Request for Deferral of Action, FCC File Nos. CSS-94-019 and CSS-94-020, dated September 6, 1994.

^{3/} Moreover, the proposals unnecessarily duplicate existing requirements. For example, Transworld proposes that Section 63.52(c) of the Commission's Rules "be amended" to require an affidavit from a senior company official that verifies the accuracy of a petition to deny. The cited rule, however, already requires such petitions to include a supporting affidavit of a person with personal knowledge of the facts set forth in the petition. See 47 C.F.R. § 63.52(c) (1994).

The Commission should also ignore the calls of those who self-servingly predict (or threaten) adverse consequences for U.S. carriers already doing business overseas, and who generally encourage the United States to continue blindly "leading by example." In the international satellite arena, the United States has been leading by example for several decades with little apparent salutary effect. It is time for other nations to begin following the U.S. lead or get off the dance floor. By taking a strong stand requiring reciprocal entry as a condition of future access to the U.S. satellite services market, the FCC will hasten the day when market openness is a universal instead of a unilateral practice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cristina M. Lirag, do hereby certify that a true copy of the foregoing Reply Comments of Columbia Communications Corporation was mailed by first-class mail, postage prepaid this 12th day of May 1995, to the following:

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